

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1490 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI K PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

Mr. S.T.Mehta, ASSTT. GOVERNMENT PLEADER for the Respondent

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/08/98

ORAL JUDGEMENT

This petition involves the question regarding ownership of property no.1, sheet no.30, Chalta no. 590, (2) sheet no.30, chalta no. 537. City Survey Officer by his order dated 28.4.78 held that the petitioner is the owner of property no.1, while the Government was held as the owner of the property no. 2. The petitioner filed an appeal before the Deputy

Collector against the order dated 28.4.78 regarding property no. 2 bearing sheet no.30, chalta no. 537. The Deputy Collector allowed the appeal and remanded the case to City Survey Officer by an order dated 5.2.80. After remand, the City Survey Officer by his order dated 15.10.81 held the petitioner as the owner of both the properties. The Collector, exercising his suo motu powers under section 211 of the Land Revenue Code, issued a show cause notice to the petitioner. After hearing the parties, the Collector by his order dated 11.10.82 remanded the matter to the City Survey Superintendent. After remand, the City Survey Superintendent, held the petitioner as co-owner of the property in dispute by his order dated 27.1.1984. The Collector revised the matter by his order dated 23.5.1985 under section 211 of the Bombay Land Revenue Code, 1879. The Collector set aside the order dated 27.1.84 of the City Survey Superintendent by his order dated 23.5.1985 and held the Government as owner of the property.

3. The learned counsel for the petitioner challenged the order of the Collector mainly on the following three grounds.

- (1) The Collector has no power under section 211 of the Bombay Land Revenue Code to review any order, particularly the order passed under section 37(2) of the Code as an appeal lies to Gujarat Revenue Tribunal under section 9 of the Bombay Revenue Tribunal Act, 1957-schedule I. As such, the powers exercised by City Survey Superintendent on behalf of the Collector under section 37(2) cannot be revised by the Collector.
- (2) The original order dated 28.4.78 of property except sheet no.30, chalta no.537 was held to be of the ownership of the petitioner as no appeal was filed by the Government against that order on the subsequent orders declaring sheet no.590 declaring ownership of Government land is illegal.
- (3) The Collector has no jurisdiction to hold inquiry regarding property in dispute.

5. Even if it is assumed that the order passed by the Collector was without jurisdiction, then also, the petitioner had a remedy to file an appeal before the Revenue Tribunal. The learned counsel for the petitioner submitted that the order of the Collector being illegal and without jurisdiction, this Court has power to set aside the same and hence an appeal before

appropriate forum was not filed.

6. As proper forum for filing an appeal before the Revenue Tribunal is available, the petitioner is permitted to file an appeal before the Revenue Tribunal within a period of four weeks from the date of this judgment. Other side will not raise any question regarding limitation. In case such an appeal is filed within four weeks, the Tribunal will decide the same on merits in accordance with law on the questions raised before it as well as other available questions from the record of the case. As this Court has protected by an ad-interim order dated 14.4.86, and it is still continued by various order, it is continued till the disposal of the appeal. The Tribunal is directed to decide the appeal in accordance with law on merits of the case ignoring the question of limitation and as expeditiously as possible and preferably within six months. Till the final decision of the appeal by the Tribunal, the petitioner shall not be dispossessed. With these observations, this petition is disposed of with no order as to costs.

....

***darji